Supreme Court, U.S.
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No. 98-184

In The

Supreme Court of the United States

October Term, 1998

THE STATE OF WYOMING,

Petitioner,

vs.

SANDRA HOUGHTON,

Respondent.

On Writ Of Certiorari
To The Wyoming Supreme Court

BRIEF FOR THE RESPONDENT

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QUESTION PRESENTED

Whether the "automobile exception" to the Fourth Amendment's warrant requirement allows police to search a passenger's personal belongings – in this case a purse – located inside the passenger compartment of a vehicle lawfully stopped for traffic violations, when police have developed probable cause to search the vehicle generally for controlled substances but have no probable cause specific to the purse or passenger.

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STATEMENT OF THE CASE

Respondent, Sandra Houghton, was a passenger in a car driven by David Young. The car was pulled over by a Wyoming Highway Patrol Officer because of faulty lights and the car appeared to be speeding. The officer was quickly joined by two other officers. (J.A. 16-17).

The officer approached the driver's side of the vehicle. While questioning Young, he noticed a syringe in Young's pocket. Young was ordered out of the car and searched. Ms. Houghton and another female passenger were also ordered out of the car and frisked. (J.A. 17-18).

Without consent, the officer searched the vehicle. He discovered a large purse in the rear seat of the car; Ms. Houghton claimed ownership. The officer then opened the purse, without permission, and found a wallet containing identification for Sandra Houghton. He further searched the purse and found three small wallet-type containers. In these containers, he found diluted methamphetamine. (J.A. 18).

Before trial, Ms. Houghton filed a motion to suppress all evidence found during the warrantless search. During this hearing, the officer admitted that he had no probable cause to search Ms. Houghton and that men do not usually carry purses. (J.A. 21). The district court denied the motion to suppress. (J.A. 27-28).

Ms. Houghton was found guilty of felony possession of a controlled substance and sentenced to the Wyoming Women's Center for two to three years. (J.A. 286, 304-305). Ms. Houghton appealed her conviction to the

Wyoming Supreme Court. The court reversed her conviction, holding that "the search of [Ms. Houghton's] purse exceeded the reasonable scope of the search of the car, violating her Fourth Amendment rights." (Pet. App. 2).

SUMMARY OF ARGUMENT

The Fourth Amendment prohibits police from searching the personal effects of persons they have no reason to believe have engaged in any kind of wrongdoing. The Wyoming Supreme Court preserved this principle when it held the search of Ms. Houghton's personal belongings unreasonable.

I. The Wyoming Supreme Court's holding continues this Court's prior rulings requiring probable cause before a warrantless search of a passenger's personal belongings can be conducted, even when the search is pursuant to the automobile exception. *See Carroll v. United States*, 267 U.S. 132, 149 (1925); *United States v. Ross*, 456 U.S. 798, 825 (1982); *California v. Acevedo*, 500 U.S. 565, 580 (1991).

The automobile exception does not broaden the scope of a warrantless search. The scope of a warrantless search is the same as one authorized by a warrant and is limited to places where there is probable cause to believe contraband will be found. If a passenger is not suspected of criminal activity, there is no probable cause to believe contraband will be found in the passenger's personal belongings; any search of those belongings would be unreasonable. In this case, the officer admitted he did not have probable cause to believe Ms. Houghton was

involved in any illegal activity. (J.A. 21). Therefore, the officer did not have probable cause to search Ms. Houghton's personal belongings. The search was outside the scope of the automobile exception's warrantless search.

Petitioner's argument that once there is authorization to search a large container, all smaller containers within the large container can be searched without probable cause specific to the smaller container directly contradicts the Court's holding on the scope of a warrantless search pursuant to the automobile exception. In *Ross*, the Court held that containers within the automobile which cannot conceal the contraband sought cannot be searched. "[P]robable cause to believe that undocumented aliens are being transported in a van will not justify a warrantless search of a suitcase." *United States v. Ross*, 456 U.S. at 824. This argument has already been answered by this Court and the answer is adverse to Petitioner's position.

II. Petitioner suggests that if this had been a search incident to arrest, the officers would have been able to search Ms. Houghton's personal belongings. This Court has not extended *New York v. Belton*, 453 U.S. 454 (1981), to searches of passengers who have not been arrested. This case does not present the facts for this Court to decide the issue. Ms. Houghton was not arrested or suspected of criminal activity prior to the search and the only basis for the arrest came subsequent to the search. Allowing use of the fruits of the search to justify the intrusion would nullify the probable cause and individualized suspicion requirements of the Fourth Amendment.

There is no anomaly created by the existence of more than one exception to the warrant requirement. There are several exceptions, including: stop and frisk, evanescent evidence, and plain view. Each of these exceptions has specific conditions precedent that must be met before a search or seizure is considered reasonable.

More disturbing is the proposition of the Petitioner which would allow the automobile exception to subsume the search incident to arrest exception. Absent an arrest, a search should be allowed only when there is probable cause to believe the passenger's personal belongings contain contraband.

III. The Wyoming Supreme Court's holding is a continuation of the fundamental principles of the Fourth Amendment that a warrantless search without probable cause or individualized suspicion is unreasonable. Before a search of a passenger can occur, there must be individualized suspicion and probable cause to believe that person is engaged in illegal activity. When there is general probable cause to search an automobile, a presumption exists that all containers within the automobile may also be searched. However, if the officer knows or has reason to know that the container belongs to a person the officer does not have probable cause to believe is involved in criminal activity, the container cannot be searched. Officers already apply the holding of the Wyoming Supreme Court. *See California v. Acevedo*, 500 U.S. at 579, 580.

This Court should affirm the judgment of the Wyoming Supreme Court and hold that probable cause is

required before a law enforcement officer may search a passenger's personal belongings.

ARGUMENT I

The Wyoming Supreme Court's holding that the search of Ms. Houghton's purse was unreasonable is the essence of this Court's automobile exception doctrine as developed in *Carroll*, *Ross* and *Acevedo*.

"[T]he Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. 347, 351 (1967). The government is required to respect privacy rights afforded to its citizens under the Fourth Amendment. *Chandler v. Miller*, 520 U.S. 305, ___, 117 S.Ct. 1295, 1298 (1997) ("This restraint on government conduct generally bars officials from undertaking a search or seizure absent individualized suspicion.")

Individualized suspicion requires that the search or seizure of a person or his effects be supported by probable cause particularized to that person. Probable cause is not present where it is based on the mere association of the person with someone else suspected of criminal activity or the person's mere presence at the scene of a crime. *Ybarra v. Illinois*, 444 U.S. 85, 91 (1979). Similarly, mere presence in a suspected car, without more, does not vitiate one's right to be free from unreasonable searches. *United States v. DiRe*, 332 U.S. 581, 587 (1948).

The Wyoming Supreme Court affirmed this basic principle of Fourth Amendment law when it held that the search of Ms. Houghton's purse was unreasonable. Ms. Houghton's mere presence in the automobile which the

officer had probable cause to search did not generate probable cause to search her personal belongings. The State attempted to justify the search of Ms. Houghton's personal belongings by relying on the automobile exception. However, the automobile exception to the Fourth Amendment's warrant requirement does not diminish, nor encroach upon, the right to be free from unreasonable searches, including the unreasonable search of automobile passengers.

The automobile exception has evolved from two particular circumstances. First, automobiles are mobile. *California v. Carney*, 471 U.S. 386, 390-391 (1985); *Carroll v. United States*, 267 U.S. 132, 151 (1925). Removal of the automobile and disposal of any contraband hidden in the vehicle is easily accomplished. Second, individuals have a "reduced expectation of privacy in an automobile, owing to its pervasive regulation." *Pennsylvania v. Labron*, 518 U.S. 938, 940 (1996), relying on *California v. Carney*, 471 U.S. 386, 393 (1985). This Court has held it reasonable to search a vehicle, "[i]f a car is readily mobile and probable cause exists to believe it contains contraband." *Pennsylvania v. Labron*, 518 U.S. at 940.

Three cases from this Court have delineated the scope of the search allowed by the automobile exception, which is the sole issue of this case. *See Carroll v. United States*, 267 U.S. 132, 153-154 (1925); *United States v. Ross*, 456 U.S. 798, 825 (1982); *California v. Acevedo*, 500 U.S. 565, 580 (1991).

In *Carroll*, the Court first established the automobile exception to the Fourth Amendment warrant requirement

when it held that an automobile could be searched only if there was probable cause for the search:

> But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.

Id. 267 U.S. at 154.

Ross clarified that *Carroll* relaxed the warrant requirement but still required the scope of the search to be based on probable cause. In *Ross*, the Court held that containers within an automobile may be searched when there is probable cause to believe that the contraband sought will be found inside the container. However, the scope of the search is no broader or narrower than would be authorized by a warrant. *United States v. Ross*, 456 U.S. at 825.

The next case in the automobile search line of cases is *Acevedo* in which this Court held, "We therefore interpret *Carroll* as providing one rule to govern all automobile searches. The police may search an automobile and the containers within it where they have probable cause to believe contraband or evidence is contained." *California v. Acevedo*, 500 U.S. at 580.

The Wyoming Supreme Court preserved the probable cause requirement of the automobile exception, the individual's right to privacy and the need for individualized suspicion under the Fourth Amendment when it

acknowledged the "notice test."[1] This test assists police officers in determining if probable cause exists which would allow a warrantless search of personal belongings found during an automobile search. The notice test is based on the presumption that the entire vehicle and all of its containers may be searched if the officer believes that contraband has been concealed in the vehicle. However, if during the search, the officer finds the personal belongings of the passenger, and he has no probable cause to believe the passenger is involved in illegal activity and does not believe that the passenger has concealed items for the driver, there is no probable cause for a warrantless search of the passenger or the passenger's belongings. The Wyoming Supreme Court's holding protects an innocent person, as the Fourth Amendment requires, from an unreasonable search even when there is probable cause to search the vehicle in which the individual is a passenger. In this case, after pulling over the driver for speeding and a faulty light, the officer noticed a syringe in Young's pocket. Upon inquiry, Young admitted using the syringe to take drugs. (J.A. 17). The officer had probable cause to believe Young might have illegal substances concealed in the automobile. (J.A. 20-21). However, the officer admitted there was no probable cause to believe Ms. Houghton was involved in any criminal activity. (J.A. 21). During his search, the officer found a large purse, which he searched even though, "[g]enerally speaking, men do not carry purses." The officer knew

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[1] The notice test is simply new terminology for the previously prescribed process an officer engages in to determine individualized probable cause in an automobile stop.

that the purse belonged to Ms. Houghton but he had probable cause to believe only Young was involved with criminal activity. (J.A. 18, 21).

The Wyoming Supreme Court concluded that the officer knew or should have known that the purse did not belong to Young and "that [the officer had] no reason to believe the object of the search was placed in the purse prior to the stop." (Pet. App. 18). The purse was outside of the scope of a lawful search because there was no indication that it might contain contraband. This conclusion is consistent with this Court's prior holding in *Acevedo* that only containers which the officer has probable cause to believe contain contraband may be searched. *California v. Acevedo*, 500 U.S. at 580.

In *Ross* and *Acevedo*, there were no passengers in the vehicle. The probable cause in each of those cases allowed the search of all containers within the automobile which could contain the contraband sought. In this case, the officer was searching for evidence of Young's controlled substance usage. The officer had no basis to conclude Ms. Houghton's personal belongings contained evidence of Young's drug usage.

In *Acevedo*, this Court referred to the concepts of the notice test without actually labeling it as such. The police only had probable cause to believe that contraband was in the paper bag which was in the trunk of the vehicle. There was no indication that contraband had been secreted in the vehicle itself; consequently the police were on notice that the probable cause was specific to the paper bag and only the paper bag could be searched. *California v. Acevedo*, 500 U.S. at 579, 580.

In this case, the probable cause was specific to Young. Since there was no indication that contraband had been hidden in Ms. Houghton's personal belongings, and the police knew the purse did not belong to Young, there was no probable cause to believe contraband would be found in her purse. Consequently, the search was unreasonable.

If this Court were to hold that passengers may be searched even though probable cause exists that only the driver is involved with illegal activities, it would result in grave abuses of the Fourth Amendment. For example, the teenager who is being taught to drive, or the professional driver in a private car for whom there is probable cause to search have exposed the teenager's parents or the driver's client to a warrantless search. A search of either passenger under these circumstances is clearly unreasonable, but allowable under the Petitioner's bright line rule.

The Petitioner also argues that the search of a large container allows the search of smaller containers.[2] (Brief for the Petitioner, p. 23). This Court has already determined the scope of an automobile exception and Petitioner's argument must fail. There must be probable cause to search the containers within an automobile. *California v. Acevedo*, 500 U.S. at 580; *United States v. Ross*, 456 U.S. at 823-824.

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[2] Petitioner argues an automobile is a large container but does not support this proposition with any authority. The suggestion leads to preposterous results; can the apartments in a building be searched as smaller containers within a larger container?

The Petitioner also challenges the validity of the Wyoming Supreme Court's ruling because the notice test is analogous to premises search law. This challenge ignores the basis for the automobile exception which is to relax the warrant requirement because of the mobility of the vehicle. *See United States v. Ross*, 456 U.S. 798, 820 (1982). The automobile exception does not change the probable cause requirement. Probable cause must exist that contraband will be found before the search can commence regardless of whether the container is located in fixed premises or in a vehicle.

The Petitioner is also incorrect in asserting that a single rule which governs premises and automobile searches is unprecedented. *New York v. Belton*, 453 U.S. 454, 457-459 (1981), is based, in part, upon the law governing premises searches following a custodial arrest. *Ross* specifically relies on the scope of premises searches in defining the scope of a permissible automobile search. *United States v. Ross*, 456 U.S. at 820-821. Premises search law has been influential in the development of automobile search law because "the Fourth Amendment protects people, not places." *Katz v. United States*, 389 U.S. at 351.

Relying on *Ross*, Petitioner argues a warrant would allow the search of "rooms, closets and drawers of 'nonsuspect' occupants of the home." (Brief of Petitioner, p. 22). Petitioner offers no authority for this assertion in its brief. This statement ignores the particularity and probable cause requirements of the Fourth Amendment and assumes a search incident to the execution of a warrant could be extended to the personal effects of nonsuspects.

While some lower courts have held such searches reasonable, the Wyoming Supreme Court analyzed those cases and opposing cases which found such searches unreasonable, and adopted the reasoning that such a search is unreasonable when the officer knows or should know the personal effects do not belong to the person for whom the search warrant was issued. (Pet. App. 9-15). The Wyoming Supreme Court's reasoning is consistent with *Ybarra v. Illinois*, 444 U.S. 85 (1979), in which this Court held the search of a person must be based on particularized probable cause and cannot be justified by the person's mere presence on the premises where there is probable cause to search.

The Wyoming Supreme Court's opinion embraces this Court's holdings requiring individualized suspicion and probable cause to search the personal belongings of an individual. Petitioner asks this Court to allow the police to invade the privacy of persons who are not suspected of criminal activity. The State has presented no legitimate reason to justify this type of intrusion. The request is contrary to this Court's holdings in *Carroll*, *Ross* and *Acevedo* and must be rejected.

ARGUMENT II

The Fourth Amendment requires that the scope of the exception to the warrant requirement not exceed the exception.

The plain text of the Fourth Amendment prohibits searches that are unreasonable. U.S. Const., amend. IV. A "warrantless search must be commensurate with the

rationale that excepts the search from the warrant requirement." *Cupp v. Murphy*, 412 U.S. 291, 295 (1973). Accordingly, "[t]he scope of [a] search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible." *New York v. Belton*, 453 U.S. 454, 457 (1981), quoting *Chimel v. California*, 395 U.S. 752, 762 (1969), quoting *Terry v. Ohio*, 392 U.S. 1, 19 (1968).

The degree of intrusion permitted under a search incident to an exception to the warrant requirement depends at least in part on the nature of the government's need for the exception. *See New Jersey v. T.L.O.*, 469 U.S. 325, 337 (1985) ("The determination of the standard of reasonableness governing any specific class of searches requires balancing the need to search against the invasion which the search entails"). Where the police have probable cause to believe that a crime has been committed and that a particular individual is the one who has committed it, the government may need to search the area where the individual is discovered in order to preserve evidence of the crime. In contrast, where the police lack the information necessary to arrest an individual whom they are investigating, the government has less need to invade that person's privacy to preserve evidence of a crime.

That the scope of a warrantless search incident to arrest may under certain circumstances be broader than the scope of a search under any other exception to the warrant requirement, including the automobile exception, is intentional. It is entirely consistent with and compelled by the notion that the Fourth Amendment limitation on the degree the police can invade the privacy rights of a citizen is in accordance with the government's need to do so. *New Jersey v. T.L.O*, 469 U.S. at 337.

It is not true that *Belton* compels the conclusion that the police could have searched Ms. Houghton's purse if Young had been arrested. *Belton* involved the search of a jacket that belonged to a person who had been arrested. Ms. Houghton had not been arrested at the time her purse was searched. Petitioner's claim that this Court would extend *Belton* to authorize warrantless searches of containers that the police know belong to unarrested persons is pure speculation. Some lower courts have concluded that extending *Belton* to passengers who are not arrested violates the Fourth Amendment. *E.g., Commonwealth v. Knoche*, 678 A.2d 395 (Pa.Super. 1996); *Commonwealth v. Shiflet*, 543 Pa. 164, 670 A.2d 128 (Pa. 1995); *State v. Gilberts*, 497 N.W.2d 93 (N.D. 1993). If this Court is ready to extend *Belton* to permit the scope of a search incident to arrest to encompass articles belonging to persons other than the arrestee where the search preceded the arrest, the facts of this case do not present the proper opportunity to do so. Where this Court has been confronted in the past with a record which fails to establish that an arrest preceded a search, it has declined to apply the search incident to arrest doctrine. *Texas v. Brown*, 460 U.S. 730, 734 n.2 (1983).

If this Court finds that *Belton* extends to passengers, the search incident to arrest exception must remain distinct from the automobile exception. In *Belton*, the jacket belonged to a passenger who had been arrested. *Belton* is a case about the scope of a search incident to arrest. When an encounter between an officer and a suspect has escalated to the point of arrest, concerns such as officer safety face the arresting officer. These concerns justify a

search incident to arrest. These concerns are not implicated in an automobile search where no arrest occurs.

Searches are permitted under the search incident to arrest doctrine only if there actually has been an arrest. *Sibron v. New York*, 392 U.S. 40, 63 (1968) ("[I]t is axiomatic that an incident search may not precede an arrest and serve as part of its justification"). If one were allowed to bootstrap the legitimacy of a search as a search incident to arrest with the very fruits of a search that preceded the arrest, it would render the Fourth Amendment a nullity. 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 5.4(a) (3rd ed. 1996).

This case differs from *Rawlings v. Kentucky*, 448 U.S. 98 (1980). In *Rawlings*, the police had probable cause to arrest the defendant before he was searched; consequently, the fruits of the search of the defendant were not necessary to support the probable cause to arrest him. 448 U.S. at 111 n.6.

In this case, there was no arrest of the driver (the person suspected of criminal activity) and Ms. Houghton was not arrested prior to the search. There was no basis to arrest Ms. Houghton before her purse was improperly searched. Accordingly, the doctrine of search incident to arrest is simply irrelevant to the case before the Court. *Texas v. Brown*, 460 U.S. at 734 n.2; *Sibron v. New York*, 392 U.S. at 63.

Petitioner's assertion that a search incident to arrest would have allowed the search of Ms. Houghton's purse is a speculative conclusion not based on this Court's precedent. Search incident to arrest is an exception to the warrant requirement which allows a warrantless search

following an arrest. This Court has not extended that exception to include passengers who are not suspected of criminal activity and the facts of this case do not support such an extension. The automobile exception allows a search if the officer has probable cause to believe contraband will be found. The scope of the search is limited to all containers in the automobile in which the officer has probable cause to believe the contraband has been hidden. *United States v. Ross,* 456 U.S. at 824; *California v. Acevedo,* 500 U.S. at 579-580.

There is no anomalous disparity between these two searches. They are two separate and distinct exceptions to the warrant requirement. In this case, the Petitioner used the automobile exception to justify the search. The Wyoming Supreme Court rejected that justification. Since the Wyoming Supreme Court's opinion complies with the mandates of the Fourth Amendment, *see* Argument I, *supra,* it should not be disturbed based on an unsupported assertion that the search would have been allowed pursuant to a different exception.

ARGUMENT III

The Wyoming Supreme Court's holding imposes no new burdens on police, nor does it change current police standards.

This Court has consistently held that the Fourth Amendment proscribes all unreasonable searches. *Katz v. United States,* 389 U.S. 347, 357 (1967); *United States v. Ross,* 456 U.S. 798, 824-825 (1982); *Mincey v. Arizona,* 437

U.S. 385, 390 (1978). This Court has held that all warrantless searches are unreasonable, *per se*, unless the search can be justified under one of the well-delineated exceptions to the warrant requirement. *Id.* The justification of a warrantless search depends on what the searching officer knew at the time of the search and what facts validate the search.

The question becomes, what must law enforcement personnel do when they know certain facts before the inception of the search that would render the search unreasonable? The answer is undoubtedly that the search may not continue once the officers know they are infringing upon a person's right to privacy when they do not suspect criminal activity. The standard applied by the Wyoming Supreme Court is merely the expression of a concept implicit in this Court's Fourth Amendment jurisprudence.

Regardless of Petitioner's characterization, police already use the notice test in their day-to-day law enforcement activities. Police officers approach encounters with citizens by deciding whether they suspect the person of criminal activity. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). If an officer suspects that an automobile driver is engaging in criminal activity, the officer may search the driver's automobile for evidence of that activity, including all containers which may contain the evidence sought. If the officer finds a container he does not have probable cause to believe contains such evidence, he cannot search that container. *California v. Acevedo*, 500 U.S. at 580; *United States v. Ross*, 456 U.S. at 823-824. When an officer becomes aware of facts which invalidate the search, he is required to pause in the search. If the search continues

despite the knowledge, the search is considered unreasonable. *E.g., Smith v. United States*, 335 F.2d 270, 274, n. 11 (D.C. 1963) (search invalidated because of officer's imputed knowledge of car ownership); *United States v. Ramirez*, 112 F.3d 849, 852 (7th Cir. 1997) (if a mistake is discovered questioning the validity of a wiretap warrant, law enforcement may not use the authority of the warrant to conduct a search); *State v. Herrin*, 915 P.2d 953, 956 (Or. 1996) (search of car driven by defendant invalidated, in part, because of officer's knowledge of only passengers as possessors of drugs or paraphernalia).

Pursuant to the Wyoming Supreme Court's holding, the searching officer may search all containers unless he knows or should know that the container to be searched does not belong to the suspect and he does not have reason to believe that the suspect placed the object of the search in the nonsuspect's container. The focus of Wyoming's holding integrates effective law enforcement with the protection of individual rights. The holding is only applicable where there is no generalized probable cause for everyone in the vehicle and does not prevent any searches; it merely forces the searching officer to recognize that he may not invade a citizen's privacy where there is no constitutional justification for the intrusion. The test imposes no new burdens upon police officers. Nowhere in this Court's jurisprudence is there any sanction of a search incident to the automobile exception to the warrant requirement in the plain and obvious absence of probable cause. The searching officer readily admitted on the record that he did not see anything prior to the search that would give him probable cause to believe that

Ms. Houghton was using drugs, and therefore could be searched as thoroughly as Young. (J.A. 21).

In this Court's previous Fourth Amendment opinions, with particular attention to the automobile exception to the warrant requirement, this Court has underscored that the determination of the reasonableness of a search necessarily contains an inquiry whether the searching officer had probable cause to justify the warrantless search. The searching officer in this case not only knew he did not have probable cause to search Ms. Houghton, but also knew that the container he wanted to search did not belong to Young.

The Wyoming Supreme Court's holding is an expression of this Court's prior holdings requiring probable cause and individualized suspicion before a search can be justified. While the exceptions to the warrant requirement focus on what would validate a warrantless search, the Wyoming Supreme Court's holding helps the officer recognize when a warrantless search becomes invalid and should cease. This protects the individual's right to privacy and provides a workable tool for law enforcement during automobile searches when passengers are present.

CONCLUSION

Ms. Houghton respectfully requests that this Court affirm the Wyoming Supreme Court's holding that the search of a person's personal belongings who is not suspected of criminal activity is an unreasonable search under the Fourth Amendment.

Respectfully submitted,

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